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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,688	11/26/2003	Peter Gaal	030153	8929

23696 7590 01/30/2008
QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

EXAMINER

ELCENKO, ERIC J

ART UNIT	PAPER NUMBER
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2617

NOTIFICATION DATE	DELIVERY MODE
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01/30/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/723,688

Applicant(s)

GAAL ET AL.

Examiner

Eric Elcenko

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-31 and 37-38, drawn to a method of communication with a communication station, classified in class 370, subclass 335.
 - II. Claims 32-36, drawn to a subscriber station, classified in class 370, subclass 329.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the communication station and system does not require any return signal or information from the subscriber station to allow for normal operation of the system. The subcombination has separate utility such as disspreading a supplemental channel and a dedicated channel and combining the communications on the dedicated and supplemental channels.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all

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the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

4. A telephone call was made to Dean Tricarico on 1/17/07 to request an oral election to the above restriction requirement, but did not result in an election being made.

5. During a telephone conversation with Dean Tricarico on 1/17/08 a provisional election was made without traverse to prosecute the invention of I, claims 1-31 and 38-38. Affirmation of this election must be made by applicant in replying to this Office action. Claims 32-36 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1- are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindskog (U.S. Pub. No. 2006/0120322) in view of Scherzer et al. (U.S. Pat. No. 6,901,062)

In regard to Claims 1, 7, 14, 16, 19, 25-26 and 37-38, Lindskog teaches allocating a first code to a first subscriber station, (*A request comes in for allocation of channel resources, and a specific channel resources is allocated, Abs*) Assigning a first sub-code derived from the first code to support a dedicated channel to the first subscriber station, (*depending upon the rate needed, a code is broken down as shown in Fig. 2 into smaller sub-codes of the larger code to maximize the resources available., Para 25-27*) This process can be done for multiple mobile stations. Assigning a second sub-code derived from the first code to support a supplemental channel to the second subscriber station. (*depending upon the rate needed, the allocation may contain multiple codes from the tree as shown in Fig. 2. from which more than one sub-code*

would be allocated to maximize the resources. Different size codes from different parent codes would be used, making them multiple codes. Para 28,30,37 and 44)

Lindskog does not directly disclose a second mobile station. While it is obvious that more than 1 mobile station would be present in a communication system, Scherzer is cited for a direct reference to multiple mobile stations.

Scherzer teaches grouping the subscriber stations in a number of groups (e.g., M groups) and allocating resources to subscriber stations in groups. (Col 9, Ln 33-55)

It would have been obvious to one of ordinary skill in the art to modify Lindskog to include the teaching of Scherzer in order for a larger number of subscribers to be handled and provide more efficient service while taking into consideration a large group of connections rather than a single mobile station.

In regard to Claims 2, 8, 10, 20 and 28, Lindskog teaches assigning a third sub-code derived from the first code to support a second supplemental channel to the second subscriber station. *(Para 28, 30 , 37 and 44)*

In regard to Claim 3, 11, 21, and 29, it is obvious to one of ordinary skill in the art that that in a communication system at any time there can be a mobile in soft hand off and one not in soft handoff. There can also be non in soft handoff. The allocation of a code to a mobile in soft-hand off would only constitute holding the resource in the first cell for additional time. (Para 65)

In regard to Claims 4, 9, 17-18, 22 and 27 Lindskog teaches separating communications to the second subscriber station into first and second portions. spreading the first portion of the communication with the second code and spreading

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the second portion of the communications with the second sub-code. (*spreading codes are assigned to a forward-link connections from a first set of orthogonal odes as long as there are codes available in the first set. When no more codes are available, codes from a second set Are assigned. Para 4)*

In regard to Claim 5, 12, 15, 23 and 30, Lindskog teaches he first sub-code comprises a plurality of concatenated copies of the first code. (Para 28)

In regard to Claim 6, 13, 24 and 31, Lindskog teaches signaling to the second subscriber the first code. (Para 27-30)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Elcenko whose telephone number is (571) 272-8066. The examiner can normally be reached on M-F 7:30 AM through 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duc Nguyen can be reached on (571) 272-7503. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ee



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